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JURY TRIAL

2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

S1 22 CR 644 (JSR)

5 STEVEN PEREZ, A/K/A "LUCHA," ,

6 Defendant.

7 -----x
8 New York, N.Y.
9 August 31, 2023
9:30 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 ASHLEY NICHOLAS

18 MADISON SMYSER

19 SARAH MORTAZAVI

20 Assistant United States Attorneys

21 FEDERAL DEFENDERS OF NEW YORK

22 Attorneys for Defendant Perez

23 ZAWADI BAHARANYI

24 AMANDA MAYO

25 ALSO PRESENT: ANANYA SANKAR, Paralegal, U.S. Attorney's Office

ARJUN AHUJA, Paralegal, U.S. Attorney's Office

SARAH KWON, Paralegal, Federal Defenders of New York

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1 (Trial resumed; jury not present)

2 THE COURT: While we're waiting for that juror, at the
3 end of yesterday we had an interesting discussion about a
4 sentence in my charge beginning with the words "the gist."
5 Counsel for both sides and the Court were all looking at the
6 wrong version, what was labeled the revised version, but not
7 the second revised version.

8 And in fact, even though I stout the defendant the
9 language in the revised version, I had changed the language
10 pretty much in accordance with the issues that both sides had
11 raised. So you got last night the final version, and I will
12 give my courtroom deputy a copy of my charge marked as Court
13 Exhibit 1 to docket.

14 THE DEPUTY CLERK: And all jurors are present now.

15 THE COURT: Now we've just received three, four, five
16 notes from the jury. They're all dated 9:30, so there's no
17 particular order. But the notes are -- and it's unclear who
18 they're from. One was any search made in the house of the
19 accused. Two, if yes, were any firearms found that was
20 purchased by the straw purchaser.

21 Next note. What is the law on searching someone's
22 belongings? Does he have to provide permission?

23 Third note. Your Honor, it is important what state
24 the defendant received the gun in. If he received the gun in a
25 different state other than New York, did he still break the

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1 law. With regard to charge number two, the same.

2 Your Honor, I find the definition of "willfulness" is
3 operating with bad intent to be too vague to reason about.

4 What is "bad" and by whose judgment must it be bad. Certainly
5 many cases are connected by people who do not think they are
6 doing something bad, and yet they are doing something bad by
7 someone else's judgment. Can you help make this more clear.

8 Thank you. And finally, can we hear the 911 call.

9 You will recall that the government wanted to put that
10 in. Defense objected, and I sustained the objection. So it's
11 clear they've been thinking about this overnight. My
12 suggestion is that we bring them in, deliver the charge, and
13 then tell them if they still have any questions, then's the
14 time to send us a new note through their foreperson and we'll
15 deal with the note then. Any objection to that?

16 MS. NICHOLAS: No objection, your Honor. I just will
17 raise that in particular I think the third note about which
18 state the guns were obtained in is exactly what the government
19 was getting at with the proposed instruction about use of an
20 agent. So I think we would want to renew that request to add
21 the sentence back in about that being otherwise attaining
22 within the definition of the law.

23 THE COURT: I'm not going to change the charge at this
24 point, but I will respond to any questions they have after
25 we've given them the charge.

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1 MS. NICHOLAS: Understood.

2 MS. BAHARANYI: That's fine, your Honor.

3 THE COURT: That's fine from the defense?

4 MS. BAHARANYI: Yes, your Honor. That's fine.

5 THE COURT: Okay. Very good. Okay. Let's bring in
6 the jury.

7 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen. Thank
3 you again for your promptness. Please be seated. Thank you
4 also for your notes. We're going to read together now and then
5 you'll have with you to take into the jury room my instructions
6 of law. I this that will answer some of your questions.

7 But if it doesn't answer all your questions, then
8 after you get back in the jury room, the formal way to do this
9 is to have your foreperson, whoever you select as your
10 foreperson, then send me a note with whatever questions you
11 still have and I'll be happy to answer them at that time. But
12 let's take a look at the instructions of law. As you will see
13 from the table of contents, they're divided into three
14 sections.

15 First, there are general instructions which pretty
16 much apply not just to this case, but all criminal cases. Then
17 there is a section on the specific charges in this case, and
18 finally there's some concluding instructions about how you fill
19 out your verdict form and things like that. So let's turn to
20 page four and begin with instruction number four.

21 We are now approaching the most important part of this
22 case, your deliberations. You have heard all the evidence in
23 the case, as well as the final arguments of the lawyers for the
24 parties. Before you retire to deliberate, it is my duty to
25 instruct you as to the law that will govern your deliberations.

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1 These are the final and binding instructions, which entirely
2 replace the preliminary instruction I gave you earlier. As I
3 told you at the start of this case, and as you agreed, it is
4 your duty to accept my instructions of law and apply them to
5 the facts as you determine them.

6 Regardless of any opinion that you may have as to what
7 the law may be or ought to be, it is your sworn duty to follow
8 the law as I give it to you. Also, if any attorney or other
9 person has stated a legal principle different from any that I
10 state to you in my instructions, it is my instructions that you
11 must follow.

12 Because my instructions cover many points, I have
13 provided each of you with a copy of them, not only so that you
14 can follow them as I read them to you now, but also so that you
15 can have them with you for reference throughout your
16 deliberations. In listening to them now and reviewing them
17 later, you should not single out any particular instruction as
18 alone stating the law, but you should instead consider my
19 instructions as a whole.

20 Your duty is to decide the fact issues in the case and
21 arrive, if you can, at a verdict. You, the members of the jury,
22 are the sole and exclusive judges of the facts. You pass upon
23 the weight of the evidence; you determine the credibility of
24 the witnesses; you resolve such conflicts as there may be in
25 the testimony; and you draw whatever reasonable inferences you

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1 decide to draw from the facts as you determine them.

2 In determining the facts, you must rely upon your own
3 recollection of the evidence.

4 To aid your recollection, we will send you at the
5 start of your deliberations a list of all the exhibits, a
6 laptop on which you can view the videotapes, all the other
7 exhibits themselves except the guns and ammunition (which will
8 remain outside unless you ask to see them, and certain Excel
9 spreadsheets that, for convenience, you can view on the
10 laptop). If you need to review particular items of testimony,
11 we can also arrange to provide them to you in transcript or
12 read-back form.

13 Please remember that none of what the lawyers have
14 said in their opening statements, in their closing arguments,
15 in their objections, or in their questions, is evidence. Nor is
16 anything I may have said evidence. The evidence before you
17 consists of just three things: the testimony given by witnesses
18 that was received in evidence, the exhibits that were received
19 in evidence, and the stipulations of the parties that were
20 received in evidence.

21 Testimony consists of the answers that were given by
22 the witnesses to the questions that were permitted. Please
23 remember that questions, although they may provide the context
24 for answers, are not themselves evidence; only answers are
25 evidence, and you should therefore disregard any question to

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which I sustained an objection. Also, you may not consider any answer that I directed you to disregard or that I directed be stricken from the record. Likewise, you may not consider anything you heard about the contents of any exhibit that was not received in evidence.

Furthermore, you should be careful not to speculate about matters not in evidence. For example, there is no legal requirement that the Government prove its case through a particular witness or by use of a particular law enforcement technique. Nor should you speculate about why one or another person whose name may have figured in the evidence is not part of this trial or what his or her situation may be. Your focus should be entirely on assessing the evidence that was presented here for your consideration.

It is the duty of the attorney for each side of a case to object when the other side offers testimony or other evidence that the attorney believes is not properly admissible. Counsel also have the right and duty to ask the Court to make rulings of law and to request conferences at the side bar out of the hearing of the jury. All such questions of law must be decided by me. You should not show any prejudice against any attorney or party because the attorney objected to the admissibility of evidence, asked for a conference out of the hearing of the jury, or asked me for a ruling on the law.

I also ask you to draw no inference from my rulings or

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1 from the fact that on occasion I asked questions of certain
2 witnesses. My rulings were no more than applications of the law
3 and my questions were only intended for clarification or to
4 expedite matters. You are expressly to understand that I have
5 no opinion as to the verdict you should render in this case.

6 You are to perform your duty of finding the facts
7 without bias or prejudice as to any party. You are to perform
8 your final duty in an attitude of complete fairness and
9 impartiality. You are not to be swayed by rhetoric or emotional
10 appeals.

11 The fact that the prosecution is brought in the name
12 of the United States of America entitles the Government to no
13 greater consideration than that accorded any other party. By
14 the same token, it is entitled to no less consideration. All
15 parties, whether the Government or individuals, stand as equals
16 at the bar of justice.

17 Please also be aware that the question of possible
18 punishment is the province of the judge, not the jury, and it
19 should therefore not enter into or influence your deliberations
20 in any way. Your duty is to weigh the evidence and not be
21 affected by extraneous considerations. It must be clear to you
22 that if you were to let bias, or prejudice, or fear, or
23 sympathy, or any other irrelevant consideration interfere with
24 your thinking, there would be a risk that you would not arrive
25 at a true and just verdict. So do not be guided by anything

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1 except clear thinking and calm analysis of the evidence.

2 The defendant here, Steven Perez, also known as Lucha
3 El, is charged with two federal crimes about which I will
4 instruct you shortly. Please bear in mind, however, that the
5 charges, or "counts" as they are called, are not themselves
6 evidence of anything.

7 The defendant has pleaded not guilty. To prevail
8 against the defendant on a given charge, the Government must
9 prove each essential element of that charge beyond a reasonable
10 doubt. If the Government succeeds in meeting this burden, your
11 verdict should be guilty on that charge; if it fails, your
12 verdict must be not guilty on that charge. This burden never
13 shifts to the defendant, for the simple reason that the law
14 presumes a defendant to be innocent and never imposes upon a
15 defendant in a criminal case the burden or duty of calling any
16 witness or producing any evidence.

17 In other words, as to each charge, the defendant
18 starts with a clean slate and is presumed innocent until such
19 time, if ever, that you as a jury are satisfied that the
20 Government has proved that he is guilty of that charge beyond a
21 reasonable doubt.

22 Since, to convict the defendant of a given charge, the
23 Government is required to prove that charge beyond a reasonable
24 doubt, the question then is: What is a reasonable doubt? The
25 words almost define themselves. It is a doubt based upon

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1 reason. It is doubt that a reasonable person has after
2 carefully weighing all of the evidence. It is a doubt that
3 would cause a reasonable person to hesitate to act in a matter
4 of importance in his or her personal life. Proof beyond a
5 reasonable doubt must therefore be proof of a convincing
6 character that a reasonable person would not hesitate to rely
7 on in making an important decision.

8 A reasonable doubt is not caprice or whim. It is not
9 speculation or suspicion. It is not an excuse to avoid the
10 performance of an unpleasant duty. The law does not require
11 that the Government prove guilt beyond all possible or
12 imaginable doubt: proof beyond a reasonable doubt is sufficient
13 to convict.

14 If, after fair and impartial consideration of the
15 evidence, you have a reasonable doubt as to the defendant's
16 guilt with respect to a particular charge against him, you must
17 find the defendant not guilty of that charge. On the other
18 hand, if, after fair and impartial consideration of all the
19 evidence, you are satisfied beyond a reasonable doubt of the
20 defendant's guilt with respect to a particular charge against
21 him, you should not hesitate to find the defendant guilty of
22 that charge.

23 In deciding whether the Government has met its burden
24 of proof, you may consider both direct evidence and
25 circumstantial evidence.

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1 Direct evidence is evidence that proves a fact
2 directly. For example, where a witness testifies to what he or
3 she saw, heard, or observed, that is called direct evidence.
4 Circumstantial evidence is evidence that tends to prove a fact
5 by proof of other facts. To give a simple example, suppose that
6 when you came into the courthouse today the sun was shining and
7 it was a nice day, but the courtroom blinds were drawn and you
8 could not look outside. Later, as you were sitting here,
9 someone walked in with a dripping wet umbrella, and, soon
10 after, somebody else walked in with a dripping wet raincoat.
11 Now, on our assumed facts, you cannot look outside of the
12 courtroom and you cannot see whether it is raining. So you have
13 no direct evidence of that fact. But on the combination of the
14 facts about the umbrella and the raincoat, it would be
15 reasonable for you to infer that it had begun raining.
16 That is all there is to circumstantial evidence.

17 Using your reason and experience, you infer from
18 established facts the existence or the nonexistence of some
19 other fact. Please note, however, that it is not a matter of
20 speculation or guess: it is a matter of logical inference.
21 The law makes no distinction between direct and circumstantial
22 evidence. Circumstantial evidence is of no less value than
23 direct evidence, and you may consider either or both, and may
24 give them such weight as you conclude is warranted.

25 It must be clear to you by now that counsel for the

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1 Government and counsel for the defendant are asking you to draw
2 very different conclusions about various factual issues in the
3 case. Deciding these issues will involve making judgments about
4 the testimony of the witnesses you have listened to and
5 observed. In making these judgments, you should carefully
6 scrutinize all of the testimony of each witness, the
7 circumstances under which each witness testified, and any other
8 matter in evidence that may help you to decide the truth and
9 the importance of each witness's testimony.

10 Your decision to believe or to not believe a witness
11 may depend on how that witness impressed you. How did the
12 witness appear? Was the witness candid, frank, and forthright,
13 or did the witness seem to be evasive or suspect in some way?
14 How did the way the witness testified on direct examination
15 compare with how the witness testified on cross-examination?
16 Was the witness consistent or contradictory? Did the witness
17 appear to know what he or she was talking about? Did the
18 witness strike you as someone who was trying to report his or
19 her knowledge accurately? These are examples of the kinds of
20 common sense questions you should ask yourselves in deciding
21 whether a witness is or is not truthful.

22 How much you choose to believe a witness may also be
23 influenced by the witness's bias. Does the witness have a
24 relationship with the Government or the defendant that may
25 affect how he or she testified? Does the witness have some

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1 incentive, loyalty, or motive that might cause him or her to
2 shade the truth? Does the witness have some bias, prejudice, or
3 hostility that may cause the witness to give you something
4 other than a completely accurate account of the facts he or she
5 testified to?

6 As to all witnesses, you should also consider whether
7 a witness had an opportunity to observe the facts he or she
8 testified about and whether the witness's recollection of the
9 facts stands up in light of the other evidence in the case.

10 In other words, what you must try to do in deciding credibility
11 is to size up a person just as you would in any important
12 matter where you are trying to decide if a person is truthful,
13 straightforward, and accurate in his or her recollection.

14 The defendant did not testify in this case. Under our
15 Constitution, a defendant has no obligation to testify or to
16 present any evidence, because it is the Government's burden to
17 prove a defendant guilty beyond a reasonable doubt. A defendant
18 is never required to prove that he or she is innocent.

19 Accordingly, you must not attach any significance to the fact
20 that the defendant did not testify. No adverse inference
21 against the defendant may be drawn by you because he did not
22 take the witness stand, and you may not consider it against the
23 defendant in any way in your deliberations in the jury room.

24 With these preliminary instructions in mind, let us
25 turn to the two specific charges against the defendant, Steven

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Perez, who goes by the name Lucha El Por Libertad or (as he prefers) Lucha El. These charges were originally set forth in what is called an Indictment, which is simply a charging instrument and is not itself evidence, so it will not be presented to you. The Indictment in this case charges Lucha El with a total of two charges, or "counts" as they are called, and each count charges a different crime. I will, for convenience, refer to each charge or count by its number as it appears in the Indictment.

Count One charges the defendant with conspiring to unlawfully transport or receive firearms that were purchased out-of-state into the state of residency of the person receiving or transporting the firearm. Count Two charges the defendant with unlawfully receiving or transporting a specific firearm purchased out-of-state into his state of residence. Before the defendant can be convicted of any of these charges, the Government must prove every essential element of the particular charge you are considering beyond a reasonable doubt. In your deliberations and in reaching your verdict, you must consider each charge separately and determine whether the Government has carried its burden of proof with respect to each essential element of that particular charge.

For convenience, I will start with Count Two, which charges the defendant with willfully receiving a specific out-of-state firearm in his state of residency, New York. After

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1 that, I will turn to Count One, which charges the defendant
2 with conspiring with other people to willfully transport or
3 receive out-of-state firearms in states of their residency.

4 Count Two, sometimes referred to as a "substantive
5 count," charges the defendant with unlawfully receiving or
6 transporting a specific out-of-state firearm into his state of
7 residence. Before the defendant can be convicted on this Count,
8 the Government must prove beyond a reasonable doubt three
9 elements:

10 First, that the defendant was not licensed to receive
11 out-of-state firearms, specifically, that he was not a licensed
12 importer, licensed manufacturer, licensed dealer or licensed
13 collector of firearms; second, that the defendant transported
14 or received into the state in which he resided a specific
15 firearm purchased or otherwise obtained outside that state; and
16 Third, that the defendant acted knowingly and willfully.

17 I will now address each of the three elements of Count Two in
18 detail.

19
20 Starting with the first essential element, the
21 Government must prove beyond a reasonable doubt that the
22 defendant was not licensed to receive out-of-state firearms,
23 specifically, that he was not a licensed importer,
24 manufacturer, dealer or collector of firearms.

25 A person is an "importer" when he is "engaged in the

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1 business of importing or bringing firearms or ammunition into
2 the United States for purposes of sale or distribution."

3 A person is a "manufacturer" when he is "engaged in the
4 business of manufacturing firearms or ammunition for purposes
5 of sale or distribution."

6 A person is a "dealer" when he is "engaged in the
7 business of selling firearms at wholesale or retail."

8 A person is a "collector" when he "acquires, holds, or disposes
9 of firearms as curios or relics."

10 The terms "licensed importer," "licensed
11 manufacturer," "licensed dealer" and "licensed collector" mean
12 any such persons who are licensed under the provisions of the
13 federal Gun Control Act. In order to be a "licensed dealer" a
14 person must file an application with and receive a license from
15 the United States Secretary of the Treasury.

16 The second essential element that the Government must
17 prove beyond a reasonable doubt is that a specific firearm - in
18 this case, a Century Arms Canik 9mm handgun, serial number
19 20CB25810 - was purchased or obtained outside of the
20 defendant's state of residence and then was received by the
21 defendant in his state of residence. In order to satisfy this
22 element, the Government must prove that the state in which the
23 firearm was purchased or was otherwise obtained was not the
24 defendant's state of residence and that the state in which the
25 defendant received the firearm was the defendant's state of

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1 residence.

2 The defendant does not have to himself purchase the
3 firearm out-of-state. A defendant who, knowing that another
4 person has purchased the gun out of state, then receives the
5 gun in the defendant's state of residence, satisfies the second
6 essential element.

7 The third essential element the Government must prove
8 beyond a reasonable doubt is that the defendant, in receiving
9 the out-of-state firearm into his state of residency, acted
10 knowingly and willfully. "Knowingly" means purposely, rather
11 than negligently or accidentally; but the defendant need not be
12 aware of the specific law that his conduct is violating.
13 "Willfully" means to act with a bad purpose and intent to act
14 unlawfully even if the defendant does not know the specific law
15 he is violating.

16 Count One, sometimes referred to as the "conspiracy
17 count," charges the defendant with conspiring with others to
18 unlawfully transport firearms that were purchased out-of-state
19 into the state of residency of the persons actually receiving
20 the firearm. Before the defendant can be convicted of this
21 Count, the Government must prove beyond a reasonable doubt
22 three elements:

23 First, the existence of the charged conspiracy;
24 Second, that the defendant knowingly and willfully became a
25 member of that conspiracy; and third, that at least one of the

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1 co-conspirators committed an overt act in furtherance of the
2 conspiracy.

3 I will now address each of the three elements of Count
4 One in detail. Starting with the first essential element, what
5 is a conspiracy? A conspiracy is an agreement, or an
6 understanding, of two or more persons to accomplish by
7 concerted action one or more unlawful purposes, known as the
8 "object" or "objects" of the conspiracy.

9 In Count One, the unlawful purpose alleged to be the
10 object of the conspiracy is an agreement to transport firearms
11 that were obtained outside the states of residency of the
12 eventual receivers into the states of residency of the
13 receivers. I have already instructed you on the essential
14 elements of that underlying crime when I instructed you on
15 Count Two. The conspiracy here charged is that several persons,
16 including the defendant, agreed to a plan to commit the same
17 kind of substantive violations.

18 Please bear in mind that conspiracy is an entirely
19 distinct and separate offense from the particular substantive
20 crime charged in Count Two of the defendant actually receiving
21 a specific out-of-state firearm in the defendant's state of
22 residency. The actual commission of the object of the
23 conspiracy is not an essential element of the crime of
24 conspiracy. Rather, the Government is required to prove beyond
25 a reasonable doubt only that two or more persons, in some way

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1 or manner, explicitly or implicitly, came to an understanding
2 to accomplish the objective of unlawfully obtaining or
3 transporting one or more out-of-state firearms in order to
4 enable one or more conspirators to receive them in their states
5 of residency.

6 While the indictment charges that the alleged
7 conspiracy began in or around May 2020 and continued up to in
8 or around July 2021, it is not essential that the Government
9 prove that the conspiracy started and ended on those specific
10 dates or that it existed throughout that period. Rather, it is
11 sufficient to satisfy the first element that you find that in
12 fact a conspiracy was formed and that it existed for any time
13 within the charged period.

14 If you conclude that the Government has proved beyond
15 a reasonable doubt that the charged conspiracy existed, you
16 must then consider whether the Government has proved beyond a
17 reasonable doubt the second essential element: that the
18 defendant joined and participated in the conspiracy and did so
19 knowingly and willfully. I have already defined the terms
20 "knowingly" and "willfully" for you in in Instruction No. 13,
21 and the same definitions apply here.

22 To join and participate in a conspiracy, it is not
23 necessary that the defendant be fully informed of all the
24 details of the conspiracy in order to justify an inference of
25 membership on his part. Nor does the defendant need to know the

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full extent of the conspiracy or all of its participants. It is also not necessary that the defendant receive any monetary benefit from participating in the conspiracy. All that is necessary is proof beyond a reasonable doubt that the defendant joined and participated in the conspiracy knowingly, and with the intent to aid in the accomplishment of its unlawful object as previously discussed.

The defendant also need not have joined the conspiracy at the outset. The defendant may have joined it at any time in its progress, and he will still be held responsible for all that was done before he joined, as well as all that was done during the conspiracy's existence while the defendant was a member. The law does not require that each conspirator have an equal role in the conspiracy. Even a single act may be sufficient to draw the defendant within the ambit of a conspiracy if it meets the essential requirements I have described.

However, I want to caution you that the mere association or friendship by one person with another person does not make the first person a member of the conspiracy, even when coupled with knowledge that second person is committing a crime. In other words, knowledge without participation is not sufficient. What is necessary is that the defendant have participated in the conspiracy with knowledge its object and with an intent to aid in the accomplishment of that unlawful

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1 object.

2 The third essential element of Count One is that one
3 of the conspirators - not necessarily the defendant, but any
4 one of the conspirators - took at least one overt act in
5 furtherance of the conspiracy. An overt act in furtherance of
6 the conspiracy can be any act of any kind taken by any member
7 of the conspiracy that is done to effectuate the conspiracy in
8 any respect. The overt act, itself, need not have been an
9 unlawful act. While the Government need not prove more than one
10 overt act, you must unanimously agree on which specific overt
11 act or acts, if any, the Government has proven beyond a
12 reasonable doubt.

13 Proof of motive is not a necessary element of any of
14 the crimes with which the defendant is charged. Proof of motive
15 does not establish guilt, nor does the lack of proof of motive
16 establish that the defendant is not guilty. If the guilt of a
17 defendant is shown beyond a reasonable doubt, it is immaterial
18 what that defendant's motive for the crime or crimes may be, or
19 whether that defendant's motive was shown at all. The presence
20 or absence of motive is, however, a circumstance which you may
21 consider as bearing on the intent of a defendant.

22 One last requirement. Before the defendant can be
23 convicted of any of the foregoing charges, the Government must
24 also establish what is called "venue," that is, that some act
25 in furtherance of that charge occurred in the Southern District

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of New York. As relevant here, the Southern District of New York is the judicial district that includes (among other places) Manhattan, the Bronx, and Westchester. Venue is proven if any act in furtherance of the count you are considering occurred in any of these counties, regardless of whether it was an act of the charged defendant or anyone else.

Furthermore, on the issue of venue—and on this alone—the Government can meet its burden by a preponderance of the evidence, that is, by showing that it was more likely than not that an act in furtherance of a given charge occurred in the Southern District of New York.

You will shortly retire to the jury room to begin your deliberations. As soon as you get to the jury room, please select one of your number as the foreperson, to preside over your deliberations and to serve as your spokesperson if you need to communicate with the Court. You will be bringing with you into the jury room a copy of my instructions of law and a verdict form on which to record your verdict.

Let me just show you the verdict form. It's a very simple white page, and it just ask you to determine as to each of the respective counts whether you find the defendant guilty or not guilty on that count. After you've made that determination, your foreperson will sign the verdict form, date it, and seal it in this envelope very cleverly marked verdict, and that will then be brought to me.

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1 And I will not open that envelope until you'll all
2 back here in the courtroom, and then we will open it, read it,
3 and ask each of you individually whether that is in fact your
4 verdict. And we go through all those technicalities to be
5 absolutely sure we have your verdict as you have decided. Back
6 to instructions.

7 In addition, we will send into the jury room a list of
8 all the exhibits; a laptop that can be used to see and hear the
9 videos and see certain Excel spreadsheets that were also
10 admitted into evidence; and all the other exhibits that were
11 admitted into evidence except for the guns and ammunition
12 (which will be kept here but which you can examine on request).
13 If you want any of the testimony provided, that can also be
14 done, in either transcript or read-back form. But please
15 remember that it is not always easy to locate what you might
16 want, so be as specific as you possibly can be in requesting
17 portions of the testimony.

18 Any of your requests, in fact any communication with
19 the Court, should be made to me in writing, signed by your
20 foreperson, and given to the marshal, who will be available
21 outside the jury room throughout your deliberations. After
22 consulting with counsel, I will respond to any question or
23 request you have as promptly as possible, either in writing or
24 by having you return to the courtroom so that I can speak with
25 you in person.

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Charge

1 You should not, however, tell me or anyone else how
2 the jury stands on any issue until you have reached your
3 verdict and recorded it on your verdict form. As I have already
4 explained, the Government, to prevail on a particular charge
5 against the defendant, must prove each essential element of
6 that charge beyond a reasonable doubt. If the Government
7 carries this burden, you should find the defendant guilty of
8 that charge. Otherwise, you must find the defendant not guilty
9 of that charge.

10 Each of you must decide the case for yourself, after
11 consideration, with your fellow jurors, of the evidence in the
12 case, and your verdict must be unanimous. In deliberating, bear
13 in mind that while each juror is entitled to his or her
14 opinion, you should exchange views with your fellow jurors.
15 That is the very purpose of jury deliberation-to discuss and
16 consider the evidence; to listen to the arguments of fellow
17 jurors; to present your individual views; to consult with one
18 another; and to reach a verdict based solely and wholly on the
19 evidence.

20 If, after carefully considering all the evidence and
21 the arguments of your fellow jurors, you entertain a
22 conscientious view that differs from the others', you are not
23 to yield your view simply because you are outnumbered. On the
24 other hand, you should not hesitate to change an opinion that,
25 after discussion with your fellow jurors, now appears to you

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1 erroneous.

2 In short, your verdict must reflect your individual
3 views and must also be unanimous. This completes my
4 instructions of law.

5 Now before we swear in the marshal and excuse you to
6 your deliberations, a couple of housekeeping items. First, you
7 can take as little, as long as you want for your deliberations.
8 I've had juries return a verdict in ten minutes. I've had
9 juries return a verdict in ten days. You may not want to adopt
10 that latter position, but the point is, it's totally up to you
11 how much time you need.

12 We will be here till 4:30, but I will excuse the
13 lawyers and parties for a one-hour break at 1:00 for lunch, and
14 you'll have your lunch in the jury room as well from 1:00 to
15 2:00. So if you send out any notes at or shortly before 1:00,
16 we probably won't be able to respond to you until 2:00. I want
17 you to be aware of that one hour break that will occur. If you
18 haven't reached a verdict by 4:30, you should just go home and
19 return at 9:30 tomorrow morning, and your foreperson will be in
20 charge of making sure you don't resume your deliberations until
21 all 12 of you are back in the jury room.

22 Now we come now to the one part of this process that I
23 don't like, which is excusing our alternate jurors. But you're
24 not off the hook yet because if for some unfortunate reason
25 some juror later on had to be excused or got sick or something

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Charge

1 like that, we would call you back and then start deliberations
2 all over again. So you still should not discuss the case with
3 anyone. We'll let you know when the case is over, but I want
4 to thank you immensely for your very excellent service. And
5 what you should do now is go back in the jury room, get your
6 stuff and leave before the jury comes in to begin their
7 deliberations. Thanks again. We will swear in the marshal.

8 (Marshal sworn)

9 THE DEPUTY CLERK: Jurors, please follow the marshal.

10 (At 10:11 a.m., the jury retired to deliberate)

11 (Continued on next page)

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Charge

1 (Jury not present)

2 THE COURT: Please be seated. All objections to the
3 charge that were previously made are preserved for purposes of
4 appeal. Now, where do we stand on the exhibits, the laptop and
5 so forth?

6 MS. NICHOLAS: Everything is here, your Honor. We
7 have the laptop as well as the thumb drive with the videos and
8 a sanitized exhibit list that I believe defense counsel has had
9 a chance to review, and we're in agreement. We have provided
10 written instructions as to logging in to the laptop. I know
11 that is sometimes a bit of a difficulty.

12 THE COURT: If the jury has problems, they'll let us
13 know and we'll send in some techy guy to work it out. So give
14 all that to my courtroom deputy and she will take it to the
15 marshal to give to the jury.

16 MS. BAHARANYI: Your Honor, we have our single exhibit
17 which is our photograph.

18 THE COURT: Yes. So my practice is that the defendant
19 and at least one attorney from each side who is authorized to
20 answer any questions has to remain on this floor. You can go
21 outside the courtroom, but you can't leave the floor because we
22 don't want to go searching for you when a note comes in. The
23 only exception is between one and two, which as I already
24 indicated to the jury you're excused for lunch during that
25 hour.

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Charge

I want to take a moment to commend counsel for both sides in this case, regardless of the verdict, and I never comment on a verdict. I thought this was a very well-tried case by both sides, very professional, and you all have reason to be proud of your work on this case. So I thank you for that because it makes my job a lot easier. And I should include in that commendation the appellate counsel for the defense who's sitting beyond the table. So very good. Thanks so much.

(Recess pending verdict)

(Continued on next page)

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Charge

1 (Jury not present - 12:04 p.m.)

2 THE COURT: So my law clerk says that the defense
3 wanted to have marked as exhibits those five unsolicited notes
4 that we received this morning before I charged the jury. I
5 don't think they should be marked as exhibits because really
6 they were nullities. I told the jury that after they heard my
7 charge, they had any questions, they should put them, and they
8 chose not to put any further questions. And I read those
9 unsolicited notes into the record, but I will give a copy of
10 them to counsel for each side just so you can compare them with
11 the transcript in case you think there was any typos or things
12 like that.

13 MS. BAHARANYI: Your Honor, on that point, before we
14 proceed. We do think that -- well, not think. The Second
15 Circuit has made clear the type of procedures for handling any
16 inquiries by the jury, and that's in *United States v. Ronder*,
17 and specifically any notes that are sent to the Court by the
18 jury should be marked as exhibits.

19 THE COURT: I don't think that applies to this
20 situation. They're not even signed. Of course any
21 communication by a juror with the Court or with my staff, I
22 immediately report it, put on the record. And in this case,
23 they were, in my view, the Court could have just simply
24 rejected them out of hand because it was before the charge.
25 And most of the questions were answered by the charges, events

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Charge

1 have proven, but what do you mean mark them as exhibits?

2 MS. BAHARANYI: Well, given that these were
3 communications from the jury about this case.

4 THE COURT: What do you mean physically by marking
5 them as exhibits?

6 MS. BAHARANYI: Taking the notes themselves just like
7 we would any defense --

8 THE COURT: And marking them as what kind of exhibits?

9 MS. BAHARANYI: Court exhibits.

10 THE COURT: No, I'm not going to mark them as court
11 exhibits, because I think I could have rejected them. I will
12 tell you what, I will give the originals to my courtroom deputy
13 and ask her to docket them as unsolicited jury notes. Any
14 problem with that?

15 MS. BAHARANYI: Your Honor, if I may have one moment.

16 THE COURT: Yeah.

17 (Pause)

18 MS. BAHARANYI: Your Honor, we maintain our objection.

19 THE COURT: I don't understand it. The only purpose
20 that you could want them marked is so that you can make
21 reference to them on any appeal, if there is a conviction. And
22 of course we're waiting on the verdict. It may be acquittal
23 for all we know. But assuming it's a conviction, you have, I
24 read them into the record. I gave you copies, and I'm going to
25 have them placed on the docket. So the Second Circuit can have

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Charge

1 numerous references to them verbatim. What more do you want?

2 The reason I'm not willing to mark them as court exhibits is
3 because I think that we didn't have occasion to discuss it that
4 I could have rejected them out of hand and ripped them up as
5 improper communication from unknown jurors, but I didn't do
6 that.

7 Instead, I told them if you still have any of these
8 questions after you, or any other question, after you've heard
9 my charge, you can put the question to me in the proper form
10 through your foreperson, and they chose not to do that. So
11 you're going to have three different ways of having them on the
12 record. I don't understand why they have to be "court
13 exhibits." Denied. Bring in the jury.

14 THE DEPUTY CLERK: Officer, can you please bring in
15 the jury. Defense counsel, can you please spell the name of
16 that case for the court reporter.

17 MS. BAHARANYI: R-O-N-D-E-R.

18 THE DEPUTY CLERK: Thank you.

19 (Continued on next page)

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Charge

1 THE MARSHAL: Jury entering.

2 (Jury present - 12:09 p.m.)

3 THE DEPUTY CLERK: Will the foreperson please rise.

4 THE COURT: The rest of you can be seated.

5 THE DEPUTY CLERK: You've say you've agreed upon a
6 verdict?

7 FOREPERSON: Yes.

8 THE COURT: All right. I'm going to open the verdict
9 envelope in a second, but I won't comment on it, because
10 deciding a verdict is your job, not mine, but I do want to
11 comment on what a great jury you were. I have been watching
12 you carefully out of the corners of my eye, and you were all so
13 attentive throughout this trial.

14 And, you know, I have another trial starting in a week
15 or two, would you like to come -- no, I guess not. Actually,
16 you'll be glad to know that you're excused from federal jury
17 service for four years now. Okay. I will open the verdict
18 form. So the verdict appears to be in proper form. I will
19 give it to my courtroom deputy to take the reading of the
20 verdict.

21 THE DEPUTY CLERK: Will the foreperson please rise.

22 In *United States v. Steven Perez, AKA "Lucha El Por Libertad,"*
23 Dkt. No. 22 Cr. 466. On Count One, the charge of conspiracy to
24 transport or receive firearms from outside states of residency,
25 you the jury find defendant Steven Perez, also known as, Lucha

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Charge

1 El Por Libertad, guilty or not guilty. You say?

2 FOREPERSON: Guilty.

3 THE DEPUTY CLERK: On Count Two, the charge of
4 interstate transport or receipt of a specific out-of-state
5 firearm, you the jury find defendant Steven Perez, also known
6 as, Lucha El Por Libertad, guilty or not guilty. You say?

7 FOREPERSON: Guilty.

8 THE DEPUTY CLERK: Shall I poll --

9 THE COURT: I'll do it. Ladies and gentlemen, you
10 heard your verdict read by your foreperson.

11 Ms. Foreperson, is that your verdict?

12 FOREPERSON: Yes.

13 THE COURT: Juror No. 2, is that your verdict?

14 JUROR: Yes.

15 THE COURT: Juror No. 3, is that your verdict?

16 JUROR: Yes.

17 THE COURT: Juror No. 4, is that your verdict?

18 JUROR: Yes.

19 THE COURT: Juror No. 5, is that your verdict?

20 JUROR: Yes.

21 THE COURT: Juror No. 6, is that your verdict?

22 JUROR: Yes.

23 THE COURT: Juror No. 7, is that your verdict?

24 JUROR: Yes.

25 THE COURT: Juror No. 8, is that your verdict?

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Charge

1 JUROR: Yes.

2 THE COURT: Juror No. 9, is that your verdict?

3 JUROR: Yes.

4 THE COURT: Juror No. 10, is that verdict?

5 JUROR: Yes.

6 THE COURT: Juror No. 11, is that verdict?

7 JUROR: Yes.

8 THE COURT: Juror No. 12, is that your verdict?

9 JUROR: Yes.

10 THE COURT: Jury polled. Verdict unanimous.

11 All right. Ladies and gentlemen, again my very great
12 thank for your excellent service, and you are now excused.

13 Have a very good weekend.

14 (Jury excused)

15 (Continued on next page)

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Charge

1 THE COURT: Please be seated. All right. We need to
2 set a sentence date. Linda.

3 THE DEPUTY CLERK: Monday, December 4th, at 2.

4 THE COURT: Monday, December 4th, at 2 p.m. Let me
5 ask the government do you have any bail application.

6 MS. NICHOLAS: Yes, your Honor. The government's
7 position is detention is mandatory in this, and we are seeking
8 detention as we have at every point throughout this litigation.

9 THE COURT: Let me hear from defense counsel.

10 MS. BAHARANYI: Your Honor, as the Court is aware, the
11 Court does have the ability to continue bail in this case even
12 following a conviction. The Court has seen Lucha El show up to
13 court numerous times, and at this point during this week
14 without any sort of even ankle monitoring condition. He is
15 eager to be part of every single step of this process. He is
16 not a flight risk, and certainly I think the family that he has
17 here today, his younger brother Israel Perez, the family that
18 is on their way back having briefly stepped outside are further
19 testaments to the ties to this community that he has. They're
20 extensive. They're long lasting.

21 THE COURT: My recollection is it's not at this point
22 just a question of flight risk, it's mandatory unless you
23 establish certain conditions. Maybe the government can remind
24 me of the statute.

25 MS. NICHOLAS: Yes, your Honor, 3143(a)(2).

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Charge

1 THE COURT: Hold on.

2 MS. BAHARANYI: Your Honor, flight is one of the
3 factors for the Court to consider.

4 THE COURT: I'm not saying that. I'm just saying it's
5 not the whole story, but let me look at 3143.

6 MS. BAHARANYI: I think to clarify, it's a presumption
7 of detention, not mandatory.

8 THE COURT: 3143, which is entitled, Release or
9 Detention of the Defendant Pending Sentence or Appeal.

10 (a) except as provided in paragraph two, the judicial
11 officer shall order that a person who has been found guilty of
12 an offense and who is awaiting imposition or execution of
13 sentence be detained unless the judicial officer finds by clear
14 and convincing evidence that the person is not likely to flee
15 or pose a danger to the safety of any other person or the
16 community.

17 Then paragraph two says, The judicial officer shall
18 order that a person who has been found guilty of an offense in
19 a case described in subparagraphs A, B or C of subsection (f)
20 (1) of section 3142, and is awaiting imposition or execution of
21 sentence be detained unless, ;(a)(1), the judicial officer
22 finds there is a substantial likelihood of a motion for an
23 acquittal or a new trial will be granted; or (2) an attorney
24 for the government has recommended that no sentence of
25 imprisonment be imposed on the person; and the judicial officer

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Charge

1 finds by clear and convincing evidence that the person is not
2 likely to flee or pose a danger to any other person or the
3 community.

4 And then, let me ask the government, does this
5 conviction fall within any of the provisions of A, B or C of
6 subsection (f)(1) of section 3142 or not?

7 MS. NICHOLAS: Our position is that it does, your
8 Honor, for the same reason that a felon in possession case
9 does. And I'm happy to provide the Court with the cite that
10 the government is relying on for that argument.

11 THE COURT: If, going back to defense counsel, if it's
12 falls within 3143(2), then the defendant must be detained
13 unless there is a substantial likelihood that a motion for
14 acquittal or a new trial be granted. I would say at this point
15 without prejudging any such motion, I think that's not a
16 finding I would remotely be able to make at this time; or, an
17 attorney for the government has recommended that no sentence of
18 imprisonment be imposed on the person. The government
19 obviously is not recommending that. And then there's again the
20 question of flight or danger to the community.

21 So if it's under the second paragraph of sub 3143,
22 it's not a question of just flight or even flight is not even a
23 question of discretion, it's a question of mandatory detention.

24 MS. BAHARANYI: Your Honor, we disagree with the
25 government's characterization or position on where this offense

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Charge

1 falls, and perhaps a proffer from them would be helpful.

2 THE COURT: Yeah, I think that's fair. So why do you
3 think it falls within section two.

4 MS. NICHOLAS: Yes, your Honor. The case is *Watkins*.
5 It's 940 F.3d 152, which is a 2019, Second Circuit case. That
6 case is specifically about possession of ammunition under
7 922(g)(1). That case looks back at how the Second Circuit has
8 looked at crimes involving the possession of a firearm, and
9 says clearly -- and I'll quote directly, "It's long been the
10 law of our Circuit, that possession of a firearm is
11 unequivocally a crime of violence for the purposes of Section
12 3142(f)(1)(A)".

13 And really the turning stone of the reasoning the
14 Court uses here is the idea that there is some risk even in
15 where it's just the possession of ammunition, the ammunition
16 can find its way into a gun, and we're in the world of a crime
17 of violence. I think there's clearly the same risks here in a
18 case involving possession transportation of firearms.

19 MS. BAHARANYI: Your Honor, if I may respond?

20 THE COURT: Yes.

21 MS. BAHARANYI: He certainly has not been charged with
22 922(g) or any subsection there. He's not charged with the
23 possession of a firearm, and I think the differences between
24 the section under which he's been charged with and what the
25 government has discussed are significant. One of the primary

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Charge

1 differences is, Congress treats these two statutes quite
2 differently. There's a maximum punishment of 15 years imposed
3 if someone's charged with 922(g). The maximum punishment for a
4 922(a)(3) offense is five years. I think they treat the
5 conduct differently -- or the statutes differently because it's
6 also meant to capture different conduct, different *mens rea*,
7 different elements.

8 We're asking the Court to follow I think the command
9 or the instructions, guidance given to us by Congress, given to
10 us to by the codebook. And I think that the arguments that we
11 would make about flight and danger are still arguments that the
12 Court can consider even if the Court were to find that this
13 fell under prong two because mandatory -- I think the Court is
14 very familiar -- mandatory remand cases come before this Court
15 often, even in the conduct of 922(g) cases, which we don't have
16 here.

17 And if there are certain compelling reasons, certain
18 exceptional reasons that exist, then a person may be allowed to
19 continue and remain in the community.

20 THE COURT: I will, before ruling on whether this
21 falls within (2) or not, what do you want to say on all those
22 other grounds.

23 MS. BAHARANYI: One of the first and primary grounds
24 is I think the ability of this Court over several months to see
25 that, while Lucha El may have different, very different

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Charge

1 opinions from the Court, very different opinions about how the
2 Court even wishes to be communicated with, he certainly has not
3 in the months since December of 2022 ever once violated a
4 condition of release, ever once failed to show up where he was
5 supposed to show up, failed to stay in touch with his pretrial
6 officer, failed to come to court. He has shown the ability to
7 abide by these very important and serious conditions that have
8 been put in place. And he was able to do that even under
9 strict conditions, home incarceration and a curfew, and under
10 the more lenient conditions that he was able to experience over
11 the past few days.

12 No matter what type of conditions the Court imposes,
13 he's able to follow them. And that segways to safety in the
14 community, his ability to maintain and conduct himself in the
15 community that does not pose a danger. Over the past several
16 months while he's been on pretrial supervision under the
17 supervision of his pretrial officer Mr. Jonathan Lettieri, he's
18 also never once had any contact with law enforcement. He's
19 never once violated any laws. In fact, in the community, his
20 community, he's been the person feeding the community. He host
21 barbecues for individuals just right outside of his home on
22 3318 Perry Avenue. He takes care of people. He's sort of the
23 community caretaker if you will.

24 Your Honor, just yesterday leaving the courthouse, one
25 of the individuals who helps sweep up outside, the different

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Charge

1 floors in this courthouse says hi to Lucha, greets him. They
2 talk about their families. They talk about each other. Lucha
3 El tells us about how he is doing after the loss of his wife
4 because that person is part of his neighbor, that person is
5 part of his community. And Lucha El looks out for him and
6 looks out for everyone in his sort of purview in the community
7 around 3318 Perry Avenue. That's not the first and only person
8 even in this courthouse that Lucha El is somewhat of a
9 caretaker for when he goes back home to the Bronx.

10 When he goes back home, he's also a caretaker for
11 those in his family. He has a son, a six-year-old named
12 Hayden. That son is his entire world. He speaks with him
13 quite regularly, daily since we've been on trial. That would
14 be another devastating loss, for that communication to no
15 longer be able to continue, for that relationship to at this
16 point be broken by his incarceration, an incarceration on
17 charges that don't involve any violence or danger on his part.
18 He did not shoot. He did not threaten. He did not assault.

19 THE COURT: What do you make of the fact that the
20 evidence showed overwhelmingly in my view that he had allied
21 himself with a "militia group" who intended to transport a
22 large number of arms to various places, and who felt strongly,
23 as he seemingly did as well, that the law be damned. They
24 thought, this was their view of the law was the law, and they
25 could do with guns and transport, receive, obtain, and

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Charge

otherwise handle weapons, indeed train to handle weapons, in any way they chose because that was in their view the law. So how can I have even the slightest confidence that he would abide by the law now that he knows that he faces sentence?

MS. BAHARANYI: Your Honor, since he was arrested, he knew that he faced potential serious consequences in this case. He's been very involved at every stage of this case. He knows what the punishments have been. Today is not the first day that he knew what could happen. He's conducted himself in a way that has shown the Court that he is certainly able to abide by the laws, the Court's rules, the Court's pretrial rules in his community. He's not pose any sort of danger. He's not threatened or hurt or assaulted anyone. And that goes just generally, your Honor, but certainly also during this time that the Court has known him and has the opportunity to spend time with him if you will as part of this case.

I do want to point out that for this militia, for this group, there again is no allegation that they threatened or hurt or assaulted anyone. This conduct that happened in Massachusetts, I know we've heard a great deal about it. We haven't heard everything about it, but we've heard a great deal about it. I think what's salient is, this is an arrest or incident that ended peacefully. It's an arrest or incident that I think even as it started the group leader said, we don't intend this to be a violent interaction. And I don't think

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Charge

1 there's been any evidence in the record that they ever once
2 were intending violence or destruction or to threaten anyone or
3 assault anyone.

4 THE COURT: What were they doing with all those
5 weapons?

6 MS. BAHARANYI: I think what did come out -- well,
7 maybe it didn't come out here, but what we know from the
8 discovery they've provided that they were planning to do
9 trainings. They had camping gear. They plan to go into the
10 woods and eat out of cans of beans and sleep outside and really
11 camp and train, learn how to use firearms, not use firearms on
12 individuals, not threaten anyone with firearms. It was truly
13 sort of a camping and training exercise, not with any violent
14 or violent intent behind it. And that's for that group.

15 I think what's also been hopefully clear from the
16 evidence is, Lucha El's involvement in that group is not as a
17 leader. It's not a longterm involvement. The only messages
18 that came in, the discussion was for about a month or two
19 before his arrest in Massachusetts. So I think to suggest that
20 he's some core member, a leader of the group I think is
21 misleading. And also to suggest that this group itself, his
22 association in any way with this group, who has a First
23 Amendment to espouse their beliefs, to speak about what they
24 believe in. But to suggest that his association with that
25 group that did not engage in violence somehow makes Lucha

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Charge

1 violent is not a fair suggestion in this case. It's quite
2 misleading.

3 I would just note that for his -- I think the Court
4 may not know this because you were not part of the initial bail
5 hearing, but Lucha stands before the court with a single prior
6 conviction that's for misdemeanor drug possession from ten
7 years ago at this point. So this is a person who has, in his
8 33 years, has a very minimal record, who's facing conviction on
9 crimes that carry a five-year statutory maximum, who did not
10 engage in any sort of violent, assaultive conduct, did not
11 threaten anyone. And the 911 call wasn't initiated because he
12 threatened anyone or engaged in violence or assaultive conduct
13 against anyone, that's not who he is. He has no convictions of
14 the nature for that. And I think he's shown the Court over
15 several months now his ability to remain in the community, his
16 ability to remain in the community and not pose any sort of
17 danger or not pose any sort of violence to anyone.

18 THE COURT: Thank you. Let me hear from the
19 government.

20 MS. BAHARANYI: I'm sorry. The last thing, your
21 Honor, because I think this is also important. And thank you
22 for my co-counsel.

23 When it comes to mandatory detention, I think we're
24 talking a bit about the standard. I want to be a bit more
25 precise about the Court's power, ability there. If there are

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Charge

exceptional circumstances, and I think the exceptional circumstances are those we laid out to the Court, then your Honor absolutely has the ability to allow him to stay out remain with his family.

THE COURT: My recollection is that by exceptional circumstances, you're not talking about just that you've shown that he's not a flight risk and/or a danger to the community, because that would mean that the mandatory aspects of these statutes are irrelevant. I think exceptional circumstances means things like someone whose got a very serious heart condition and needs immediate hospitalization or something like that. I don't see anything like that here. What you've just been arguing are the standard positions for under the first section of 3143, not anything that is exceptional.

MS. BAHARANYI: Certainly the arguments for -- we believe still your Honor should be considering this under the first section. But, I think even his background, what we've explained about his background, his exceptional behavior on pretrial release is proof that these backgrounds would even fit the exceptional circumstances that the Court is required to consider. I will also note his position as someone who is a community caretaker, his position as someone who is taking care of his family as well, his position as a young father who has again a very minimal crime history, that is exceptional in this case as well.

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Charge

1 THE COURT: I want to hear from the government, but
2 just on that narrow point of, none of that strikes me as
3 exceptional. It's very common because unfortunately most
4 crimes are committed by young males who often have dependents,
5 but let me hear from the government.

6 MS. NICHOLAS: Thank you, your Honor. I want to begin
7 by going back to 3143(a)(2) as to why this is in fact
8 mandatory. And again, *Watkins* is controlling here. *Watkins* is
9 not about anything other than possession of a firearm. It's
10 the operative concept there is crime of violence. And I think
11 all the Court needs to know is what the Second Circuit said and
12 has long said, which is that it's unequivocal that possession
13 of a firearm is a crime of violence for purposes of Bail Reform
14 Act. I think that gets us there.

15 Your Honor, I want to be clear that the government
16 would be seeking remand here as well under the non-mandatory
17 provisions for both danger and flight reasons as have been
18 articulated frequently throughout the case, but I want to
19 respond to a couple of specific arguments. First is defense
20 counsel's characterization of this group, *Rise of the Moors*.
21 This militia group that was traveling to Maine. The government
22 provided an extremely narrow set of materials to the jury.

23 Taken on their own, defense counsel's characterization
24 maybe plausible. Taken together, the full scope of what we
25 know about this group, what they were talking about, what they

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were planning, what they did in response to the defendant's first arrest in the Bronx, there is nothing about them that would suggest this was some kind of harmless camping trip in Maine. What this was, was a group of people training with firearms because they contemplated eventual violence.

In response to defendant's arrest in the Bronx, Al Aban, one of the people arrested with him in Massachusetts, told Jamal Latimer, make me lethal. They were frustrated with law enforcement. They had no regard for the law, and that was the response. This is not a harmless group, and that's the first point I want to make. I think it's just completely misleading to go off of what was shown to the jury based on decisions --

THE COURT: The Court as well kept from the jury much of the information regarding what that militia was doing and what they were up to; but of course I can consider it now on bail.

MS. NICHOLAS: And in that vein, this group refused to disarm. They refused to give their names to law enforcement. The defendant has repeatedly refused to be fingerprinted. This is not a group that respects the law, the mandates issued by courts. We also have a sample set of information about how the defendant has conducted himself in his case in Massachusetts, which has been again adjourned till February. This defendant has multiple sentences that are coming that he has every reason

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1 to want to try to avoid, which is a very clear risk of flight.
2 Even under the non-mandatory provisions, the government would
3 be seeking detention here, think it's a very compelling
4 argument both on danger and on flight.

5 MS. BAHARANYI: Your Honor, if I may respond to a few
6 points that have been raised.

7 THE COURT: Sure.

8 MS. BAHARANYI: First, regarding the characterization
9 of the group, the militia training, all of what has been raised
10 by the government. I think it's important to note that there
11 has never been once been an allegation by the government, they
12 certainly aren't charged with violent conduct in Massachusetts.
13 They have not been -- there's no allegation that they ever
14 engaged in violence.

15 I think what the government has cited or talked about
16 are messages where people are expressing frustrations, but
17 certainly not an intent to threaten or harm or assault anyone.
18 And I think the idea that this was -- not to go so far into the
19 training details, but the idea that this training was only for
20 the purpose of conducting violence is a certain speculative
21 lens; or, I would say, a filter that the government is viewing
22 the evidence through. I think the group's own words and their
23 actions, the fact that they alerted the sheriff in Maine that
24 they were going to be training there; the fact that they were
25 given permission to train in Maine; the fact that they tried --

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1 albeit perhaps in an incorrect way, they tried to go about
2 their business peacefully, all of that is proof that his
3 association with this group does not make him violent.

4 But I think to turn to some particular exceptional
5 circumstances that exist here. One, if Lucha El is remanded,
6 if he's placed in jail, it's going to be at the MDC Brooklyn.
7 I think the Court is aware of generally how dysfunctional and
8 chaotic that space is. It's only getting more so by the day
9 because of staffing shortages. They're operating at about 50
10 percent capacity for their staff right now, which means that
11 he's going to go into a cell and stay in his cell, sometimes
12 24/48 hours or a whole weekend at a time. This is problematic
13 not just because of truly how inhumane those conditions are,
14 it's also problematic because he has a pending criminal case in
15 Massachusetts that he has been attending. He's been on bail
16 for a few years now, and that pending case is going to trial in
17 February and requires his input, his participation. He's
18 actually *pro se* there, so he's instrumental in his need to have
19 access to discovery, his need to be able to talk to witnesses
20 is quite instrumental.

21 And I think the Court has seen, contrary to the
22 government's assertions, that Lucha El is someone who does have
23 a desire to be deeply involved in his legal cases. He will be
24 completely hamstrung if he's sitting at the MDC Brooklyn on
25 lockdown 24/72 hours at a time because a guard or staff member

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1 won't let him out of his cell. It also means during those time
2 periods he's not speaking with his son Hayden. He's certainly
3 not having any communication with his family, with Israel
4 Perez, with his mother Maria who is here, and also his cousin
5 Maria who the Court had the opportunity to meet. It is a
6 completely exceptional circumstance that he would be sent to a
7 place that is so isolating, so chaotic, and so violent at this
8 time, and that would hamstring, and that would completely
9 prevent him from defending himself in this other pending action
10 that the Court has been aware of now for sometime as well. One
11 moment, your Honor.

12 (Counsel and defendant conferred)

13 MS. BAHARANYI: Two more things, your Honor. The case
14 that my colleague just handed up to me which is, *United States*
15 v. *Boyd*, and I'm just looking for the cite in front of me.
16 I'll give the exact cite to the Court. The cite is 2022
17 WLS90771. This was a case decided out of this district, the
18 Southern District. There the Court held that the conditions at
19 the MDC were in fact an exceptional circumstance warranting
20 someone's continued release even after conviction.

21 The conditions have truly, your Honor, only gotten
22 worse since the pandemic, not better; that's Covid, staffing
23 related. It's truly an inhumane place to be. But one of the
24 reasons why I wanted to take a moment was to speak to Lucha El,
25 because as the Court knows, he's been very deeply involved in

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1 this case. One thing he wants the Court to know, he is not a
2 violent man. He's not a violent person. He isn't committed or
3 conducted himself ever in a violent way. He is someone who is
4 moved by love, certainly the community around him knows that
5 well, and it is certainly hard for your Honor to see that
6 because you don't see him everyday.

7 THE COURT: I received a love letter from him.

8 MS. BAHARANYI: That's not representative of who he is
9 in terms of how he feels and how he takes care of those in his
10 community. He certainly had no intent or desire at any point
11 to receive firearms to conduct violence. And I think what
12 certainly is clear from the government's preparation today is
13 they don't have any evidence to the contrary. He's not a
14 violent person. He has no history of it, and that was not the
15 goal of the conduct in this case.

16 THE COURT: All right. So the first thing the Court
17 needs to consider is whether this case fits within Section 3143
18 (a) (2) such that detention is mandatory unless there are
19 exceptional circumstances. The only thing raised by the
20 defense that this Court considers to fit within the notion of
21 exceptional circumstances would hypothetically be the
22 conditions at the MDC, although they effect. And many of the
23 same respects that were just mentioned by defense counsel the
24 conditions at the MDC negatively effect numerous defendants in
25 their ability to feel safe and their ability to prepare

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properly for their legal defense and so forth. So that is a serious problem that has bothered this Court otherwise as well.

Now having said that, what I have been able to do in individual cases before me, not this case, but cases where there were difficulties preparing for trial or so forth is arrange with the warden for appropriate provisions to be made. I don't know that I have the power to do that in regard to a case pending in Massachusetts, but certainly a judge there could do that. The warden is very receptive to that kind of arrangement.

So while I don't mean to in any way minimize the serious problems at the MDC, I don't think they meet the requirements for exceptional circumstances in this context of bail, so I think I am obliged under section 3143(a)(2) to detain the defendant.

Now assuming for the sake of argument that the conditions at the MDC would meet the exceptional circumstance provision, though as I say I don't they that's right, if I had to consider the factors under section 3143(a)(1), although it'd be a closer call, I would still detain the defendant because what I think has emerged from the proof in this case overwhelmingly is how totally he disrespects the law when it comes to firearms. And however much he may respect the law with respect to the showing up for court before a conviction, though the risk of flight is now obviously increased by the

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fact of conviction, it pales by comparison to his deep-seeded belief that he is the law when it comes to dangerous weapons.

Now I went to great lengths throughout this trial to make sure to put out of my mind his letter to the Court and told myself repeatedly during the course of the trial, if anything, Judge, lean in his favor, because you must not allow that letter to impact. But when it comes to the issues made here of bail, I think I can consider that letter as well. And that letter just further shows that he's not just a follower, he has a deep-seeded heartfelt unfortunately belief that he is the law when it comes to weapons, he and his co-conspirators.

So even under section 3143(a)(1), I would still detain him, so the marshal will take the defendant into custody at this time.

MS. BAHARANYI: Your Honor, before that happens, I think there are still a couple of points the Court should know, and I understand what the Court has said. What the government hasn't shared with the Court, but I'm sure the government is aware of, is that these firearms in Massachusetts, except for the one from Keith Vereen, were firearms that had been purchased by other people, not by Lucha; firearms that had been purchased legally too, not by Lucha, but by other individuals in their own states of residence. I could see them talking here, but I believe that's some information they are privy to, your Honor.

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I think more important is, his views on the Second Amendment, those are views. And those are views that he's now heard that the Court strongly, strongly disagrees with. His conduct over the past several month shows that even if there are disagreements, he can follow by whatever the Court -- whatever conditions are imposed, whatever the Court says he must do, he can do it. And that includes not being around, not using, not holding firearms. He's done that for several months. He will continue to do that. And throughout, up until the time of his sentencing and throughout, because now it would be a felony for him to have a firearm. He's shown he can abide by the Court's conditions.

THE COURT: I need to at this point cut you off because I've heard your arguments. I will hear the government on the last point you made that you said was within their knowledge; but of course you can appeal this ruling to the Second Circuit as you know. And if they take a different view, so be it.

MS. BAHARANYI: We would ask for the ability to have a stay pending appeal for that purpose.

THE COURT: No. Denied.

MS. BAHARANYI: Or a surrender date for Lucha El so that he can at least say good-bye to his family and his son.

THE COURT: Denied. Let me hear from the government if they want to say anything on that.

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1 MS. NICHOLAS: Very shortly, your Honor. The
2 government has never alleged there was only one straw purchaser
3 in this case. As to the names on the purchase reports, at
4 least two of the firearms were purchased by Quinn Cumberland,
5 also of the militia arrest on behalf of Al Aban, who was in New
6 York with the defendant. It's not relevant to this question,
7 your Honor.

8 THE COURT: One who even saw even the small snippets
9 of the Massachusetts events that the Court saw would join with
10 the government in saying this was not just a friendly camping
11 trip in Maine. That is ridiculous. These folks were up to no
12 good, and it's self-evident to any objective observer. That
13 concludes this proceeding. The marshals may proceed with
14 taking the defendant into custody.

15 (Adjourned)

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